

PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 231]

Intrastate Motor Carrier Safety Requirements

The Department of Transportation (Department), Bureau of Maintenance and Operations (Bureau), under the authority contained in 75 Pa.C.S. §§ 4704 and 6103(c) (relating to inspection by police or Commonwealth personnel; and promulgation of rules and regulations by department) proposes an amendment to Chapter 231 (relating to intrastate motor carrier safety requirements), as set forth in Annex A. These statutory provisions, respectively, set forth guidelines for the inspection of vehicle equipment by a police officer or qualified Commonwealth employee; and authorize the Department to adopt by reference any Federal statute or regulation or provision thereof relating to vehicles or drivers including minimum driver qualifications, maximum hours of service, loading, unloading, hazardous materials, operation, equipment, records and inspection. Further, the extent of coverage of Federal statutes or regulations adopted under 75 Pa.C.S. § 6103 extends to drivers and vehicles operating in intrastate commerce.

Purpose of Chapter 231

The purpose of this chapter is to prescribe minimum requirements and qualifications for drivers, vehicles and other matters relating to intrastate operation of commercial motor vehicles. This chapter extensively incorporates by reference provisions of 49 CFR Parts 390—397.

Purpose

The purpose of this proposed amendment is to eliminate the exemption from medical examinations and physical qualifications for commercial motor vehicle drivers employed by State and local governments. These drivers will be required to comply with the same medical examination and physical qualification requirements that all other commercial motor vehicle drivers operating in intrastate commerce are subject.

The Department, in an effort to assure continued motor carrier safety assistance program funding for Federal Fiscal Year 1996, published a proposed rulemaking at 25 Pa.B. 1962 (May 20, 1995), for purposes of amending Chapter 231 to incorporate by reference the Federal Motor Carrier Safety Regulations (49 CFR 391.41—391.49) relating to medical examination and physical qualification requirements for commercial motor vehicle drivers. The Department's proposed rulemaking also included an exemption from the medical examination and physical qualification requirements for commercial motor vehicle drivers employed by State and local governments. The Department incorporated the exemption as a consequence of time constraints for adoption of these rules and because the Department could not unilaterally impose the medical examination and physical qualification requirements upon State drivers since these drivers were signatory to a binding, existing State employe union agreement which does not expire until June 30, 1996. Accordingly, the Department felt that these requirements for State and local government drivers must be subjected to negotiation/rulemaking and comment since the Federal rules did not expressly direct, charge or mandate that

State and local government drivers be required to adhere to these provisions. Thus, the Department could not insist that these drivers subscribe to the medical examination and physical qualification requirements, and these drivers, under their collective bargaining agreements, were under no duty to comply at the time these provisions were initially adopted and applied to the other commercial motor vehicle drivers.

Further, as a consequence of the public comments received in opposition of State and local government driver exemption to the testing and physical qualifications and as a result of a meeting of Department officials with the Independent Regulatory Review Commission (IRRC) staff, the Department has committed to eliminating the exemption for State and local government drivers. Accordingly, the final adoption order published at 25 Pa.B. 3996 (September 23, 1995) included a commitment to publish a subsequent rulemaking to solicit comments on the proposed elimination of the exemption from medical examinations and physical qualification requirements for drivers employed by State and local governments.

The most significant proposed amendment to this regulation includes the following:

Section 231.85 (relating to drivers employed by State and local governments) is proposed to be amended by deleting the language exempting drivers employed by State and local governments from the requirements of §§ 231.31(b)(9) and 231.61—231.66 (relating to qualifications of drivers; and physical qualifications and examinations). This language exempted these drivers from the medical examination and physical qualification requirements of this chapter. The newly proposed language allows a driver regularly employed by a State or local government as of July 1, 1996, who cannot meet the physical qualification requirements of this chapter, to continue to operate in intrastate commerce only until the existing unqualifying condition worsens or a new unqualifying condition develops. This exemption is available only to those drivers who obtain a certification, from both their employer and medical examiner, that the driver is capable of operating in intrastate commerce despite the unqualifying medical condition. Further, the driver's qualification file must contain a copy of the medical examiner's initial certificate establishing a driver's qualification under this section, the most current biannual medical examiner's certificate and the most current motor carrier certification. These documents must be retained in the driver's file for the entire length of the driver's employment, and for 2 years thereafter.

The certification of the employing State or local government must be based on a review of the driver's past driving safety record and accident history. The employer's certification must be on a form prescribed by the Department and shall be valid for a period commensurate with that of the medical examiner's certification. Requirements for the medical examiner's certificate are not set forth in this section since they do not differ from the requirements with which the medical examiner must presently comply.

The requirements of this section are identical to those of § 231.64 (relating to drivers regularly employed as of September 23, 1995), thereby putting drivers employed by State and local governments on the same footing as other motor carrier drivers operating in intrastate commerce. The Department believes this proposed amendment will help ensure public roadway safety, while also striking a

balance that does not work severe economic hardship on those drivers with disqualifying conditions but who have historically demonstrated their ability to safely operate their vehicles.

Persons and Entities Affected

This proposed amendment will affect State and local governments and drivers employed by these governments. This proposed amendment will also affect the State Police, the Pennsylvania Public Utility Commission and the Department.

Fiscal Impact

This proposed amendment will require that drivers employed by State and local governments obtain a biennial medical examination and that their employers maintain a copy of the medical examination results. This proposed amendment may impose costs on commercial motor vehicle drivers employed by State or local governments if the driver is responsible for paying for the biannual medical examination, or the State or local governments if they assume responsibility for paying for the biannual medical examination, however, these costs are not readily measurable. Since State government self-insures its own vehicles, State government will experience no change in insurance costs. Local governments may experience a reduction in their insurance rates since their drivers will be receiving medical examinations every 2 years to determine their competency to drive a commercial motor vehicle.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of this proposed amendment on April 24, 1996, to IRRC and to the Chairpersons of the House Transportation Committee and the Senate Transportation Committee. In addition to submitting this proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of objections raised.

Sunset Provisions

The Department is not establishing a sunset date for this regulation since this regulation is needed to administer provisions required under 75 Pa.C.S. (relating to Vehicle Code). The Department, however, will continue to monitor this regulation for its effectiveness.

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendment to Amar C. Bhajandas, P. E., Director, Bureau of Maintenance and Operations, Room 1004, Transportation and Safety Building, Harrisburg, PA 17120 within 30 days of the publication of this notice of proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person is Daniel R. Smyser, P. E., Chief, Motor Carrier Division, Bureau of Maintenance and

Operations, 1014 Transportation and Safety Building, Harrisburg, PA 17120, (717) 787-7445.

BRADLEY L. MALLORY,
Secretary

Fiscal Note: 18-335. (1) Motor License Fund—Transportation; (2) Implementing Year 1996-97 is \$225,000; (3) 1st Succeeding Year 1997-98 is \$0; 2nd Succeeding Year 1998-99 is \$248,000; 3rd Succeeding Year 1990-00 is \$0; 4th Succeeding Year 2000-01 is \$273,000; 5th Succeeding Year 2001-02 is \$0; (4) FY 1995-96 \$New Program; FY 1994-95 \$New Program; FY 1993-94 \$New Program; (7) Appropriation Title: various appropriations from the Motor License Fund to the Department of Transportation, including Highway Maintenance and Highway Safety and Improvement; (8) recommends adoption.

This regulation requires all motor carrier drivers employed by State and local governments to have a biennial medical examination. The Department currently pays for the cost of these medical examinations for motor carrier vehicle drivers operating vehicles with hazardous material placards who are employed by the Department. Therefore, this regulatory fiscal note assumes that the Department will also pay for examinations for other motor carrier drivers employed by the Department now that the examinations are required.

The Department of Conservation and Natural Resources may also elect to pay for the medical examinations for motor carrier vehicle drivers employed by the Department of Conservation and Natural Resources. Costs for the Department of Conservation and Natural Resources to pay for the examinations are estimated at less than \$10,000 biennially.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

CHAPTER 231. INTRASTATE MOTOR CARRIER SAFETY REQUIREMENTS

Subchapter B. QUALIFICATIONS OF DRIVERS LIMITED EXEMPTIONS

§ 231.85. Drivers employed by State and local governments.

[Sections 231.31(b)(9) and 231.61—231.65 (relating to qualifications of drivers; and physical qualifications and examinations) do not apply to regularly employed drivers of State and local governments and agencies of State and local governments.]

(a) A driver regularly employed by State or local government as of July 1, 1996, who cannot meet the physical qualification requirements of § 231.61 (relating to physical qualifications of drivers), will be considered to be qualified to operate in intrastate commerce only if certified by the medical examiner and the employing State or local government in accordance with this section. The driver shall be considered qualified only until the existing unqualifying medical or physical condition significantly worsens or a new unqualifying medical or physical condition develops subsequent to July 1, 1996.

(b) The employing agency's certification shall be based on a review of the driver's past driving safety record and accident history. The employing agency's certification shall be on a form prescribed by the Department and shall be valid for a period commensurate with the period of the medical examiner's certificate issued in accordance with this chapter.

(c) A copy of the medical examiner's initial certificate establishing a driver's qualification under this section and annotated in accordance with § 231.62 (relating to medical examination; certifi-

cate of physical examination), the most current biennial medical examiner's certificate and the most current certification by the employing motor carrier that the driver is qualified to operate in intrastate commerce shall be maintained in the driver's qualification file for the entire period of the driver's term of employment and for an additional 2 years after termination of employment.

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